IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1564 of 1985

For Approval and Signature:

HON'BLE **MISS JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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MEHTABKHAN AMANKHAN - Applicant(s)

Versus

HASUMUDDIN ASGARALI SHAIKH - Opponent(s)

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Appearance :

MR DM THAKKAR for Mr. PM THAKKAR for Petitioner

RULE NOT RECD BACK for Respondent

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CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 04/08/2005

ORAL JUDGMENT

Though, this is a Revision Application essentially under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 {hereinafter referred to as, "**the Rent Act**'}, the petitioner has preferred the

same under Secs. 115 & 151 CPC. When the attention of the learned advocate was drawn, he appears to have made correction in the cause-title of the Revision Application without seeking permission of the Court. Though, the matter has been admitted to final hearing for these past twenty years, the respondent has yet not been served.

Feeling aggrieved by the judgment and order dated 25th April, 1984 passed by the learned Assistant Judge, Vadodara in Regular Civil Appeal No. 379 of 1981, the appellant, defendant in Rent Suit No. 211 of 1978, has preferred the present Revision Application.

The respondent-plaintiff is the owner of the building situated at Babajipura, Vadodara bearing Tikka No. 27/4, Survey No. 6, Municipal Census No. Ba/5/20-B. The first floor of the said building was leased to the petitioner-defendant for a monthly rent of Rs. 25/=.

The plaintiff instituted Rent Suit No. 211 of 1978 in the Court of Small Causes, Vadodara for recovery of possession of the suit premises on the ground that the defendant was a tenant in-default; that he was in arrears of rent since 1st January, 1975; that a notice of demand

as envisaged by Section 12 (2) of the Rent Act was given on 6th February, 1978; and that the defendant had received the said notice of demand but had neglected to pay the rent. The defendant was, therefore, not ready and willing to pay the rent. The suit was contested by the defendant vide written statement Exh. 10. He denied the allegations made in the plaint. According to the defendant, the agreed rent of the suit premises was Rs. 15/=; that he had advanced a sum of Rs. 1,100/= to the plaintiff on condition that the said amount shall be adjusted against the future rent; and that he had to recover sum of Rs. 75=00; Rs. 128=28p. and Rs. 43=29p., the amount of taxes paid by the defendant on behalf of the plaintiff and a sum of Rs. 250/= for the repairs made by him in the suit premises. He also raised dispute as to the standard rent of the suit premises. Pending the said suit, the defendant filed Civil Misc. Application No. 352 of 1979 for determination of standard rent of the suit premises as envisaged by Section 11 (1)of the Rent Act. Under the orders made on the said Civil Misc. Application, the defendant deposited a sum of Rs.325/= and Rs. 500/= on 24th July, 1979 and Rs. 100/= on 12th May, 1980. He deposited a further sum of Rs. 75/= in the pending suit on 29th June, 1981. In the said Civil Misc. Application,

the trial Court had fixed the *interim* standard rent of the suit premises at Rs. 15/= per month. The said Civil Misc. Application was not pursued further and was allowed to be dismissed for non-prosecution. The learned trial Court held that the standard rent of the suit premises was Rs. 25/= per month; that the defendant was in arrears of rent since 1st January, 1975; that the rent was payable by month; that no dispute as to the standard rent was existing on the date of the suit notice; that the defendant did not raise dispute as to the standard rent within one month from the date of the suit; that the defendant neglected to pay the amount of rent demanded within one month from the date of the receipt of the suit notice. According to the trial Court, the matter was covered by Section 12 (3)(a) of the Rent Act and the decree for eviction was inevitable. The trial Court, by judgment and order dated 30th September, 1981, allowed the suit and passed a decree for eviction against the defendant.

Feeling aggrieved, the defendant preferred Regular Civil Appeal No. 379 of 1981 in the Court of learned District Judge, Vadodara. The learned Assistant Judge dismissed the Appeal by judgment and order dated 25th

April, 1984. The learned Assistant Judge was of the opinion that the defendant did raise dispute as to the standard rent within one month from the date of the receipt of the suit notice, he was, therefore, entitled to protection under Section 12 [3](b) of the Rent Act. The defendant, however, failed to comply with the conditions mentioned in Section 12 [3](b) of the Rent Act i.e. the defendant failed to pay the amount of rent then due by the first date of hearing of the suit, and he neglected to pay the rent regularly thereafter. Therefore, the present Revision Application.

Mr. Thakkar has submitted that the defendant did raise the dispute as to the standard rent of the suit premises within one month from the date of the receipt of the suit notice. The defendant was, therefore, entitled to protection under Section 12 [3](b) of the Rent Act, as held by the lower appellate Court. However, the defendant was under no obligation to pay the rent unless and until the standard rent was determined by the Court. The defendant, therefore, was entitled to protection until the date of the decree passed by the trial Court. On the date the decree was passed by the trial Court, the defendant had deposited the amount of rent then due and

he continued to pay rent regularly thereafter. No decree for eviction, therefore, should have been passed against the defendant.

I am unable to agree with Mr. Thakkar. In the suit notice [*Exh.16*], the defendant did demand the rent of Rs. 25/= per month for the period from 1st January, 1975 upto 31st January, 1978. The defendant replied to the said notice on 16th February, 1978 [Exh. 18] i.e. within one month from the date of the receipt of the notice. However, he did not pay the rent as demanded. In the said reply [Exh.18], the defendant disputed the agreed rent of Rs.25/=. According to the defendant, the agreed rent of the suit premises was Rs.15/= and not Rs.25/= per month as claimed by the plaintiff. Though at the end, the defendant did say that the agreed rent of Rs. 15/= was excessive and the standard rent of the suit premises was Rs.10/=. Since the institution of the suit on 29th April, 1978, in the month of February, 1979, the defendant took out Civil Misc. Application No. 352 of 1979 for determination of the standard rent of the suit premises under Section 11 [1] of the Rent Act. *Obviously*, the said Application was not made within one month from the date of the receipt of the notice. Besides, the said

application was not prosecuted and allowed to be dismissed for non prosecution. *Further*, in the suit also, the defendant did not produce any evidence to show that the agreed rent of the suit premises was excessive or that the standard rent of the suit premises was lesser than the agreed rent. In my view, therefore, the dispute as to the standard rent raised by the defendant was neither genuine nor *bona fide*. The defendant cannot avail of any benefit by raising such frivolous dispute. The defendant also failed to establish that he had to recover any amount [*except the amount of taxes paid by him]* from the plaintiff as alleged. In my view, it was rightly held by the learned trial Judge that the plaintiff was entitled to decree for eviction as envisaged by Section 12 [3](a) of the Rent Act.

Even if the defendant were entitled to protection against eviction under Section 12 [3](b) of the Rent Act, the defendant; by not complying with the conditions mentioned in Section 12 [3](b) of the Rent Act, had forfeited the said right to protection against eviction. Therefore also, the plaintiff was entitled to a decree for eviction. As recorded hereinabove, pending the suit, the defendant paid a sum of Rs.925/= in the

aforesaid Civil Misc. Application NO. 352 of 1979. Evidently, on the first day of hearing of the suit i.e. 17th June, 1981, the defendant was in arrears of rent then due [*calculated @ Rs. 15/= per month, the interim standard rent fixed in Civil Misc. Application No. 352 of 1979*]. It further transpires that except the above referred deposit made on 29th June, 1981, the defendant did not pay the amount of rent due every month regularly. Instead, the defendant made a deposit of Rs. 915/= on 28th September, 1981 [a *day before the date of passing of the decree by the trial Court*]. After the said deposit also, the defendant was still in arrears. Thus, the defendant having failed to comply with the conditions of Section 12 [3](b) of the Rent Act, the lower appellate Court has rightly held that the defendant was not entitled to protection under Section 12 [3](b) of the Rent Act.

No case for interference is made out. The Revision Application is dismissed with cost. Rule is *discharged*. *Interim* relief stands vacated.

{Miss R.M Doshit, J.}

*Prakash**